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Article (Accepted Version)

Berry, Stephanie E (2018) Aligning interculturalism with international human rights law: 'Living Together' without assimilation. Human Rights Law Review, 18 (3). pp. 441-471. ISSN 1744-1021

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Aligning Interculturalism with International Human Rights Law: ‘Living Together’ without Assimilation

Stephanie E. Berry

ABSTRACT

On the basis of the perceived failure of multiculturalism, a shift towards ‘interculturalism’ has been advocated by politicians in Western Europe and international organisations including UNESCO and the Council of Europe. While seemingly benign from a human rights perspective, critics of interculturalism warn that in practice this shift can be used to justify the adoption of assimilationist policies. Forced or unwanted assimilation violates the rights of persons belonging to minorities. Consequently, this article explores the compatibility of interculturalism with international human rights law. It argues that when adopted within a minority rights (multiculturalist) framework, such as the Framework Convention for the Protection of National Minorities, interculturalism is broadly compatible with human rights standards. However, when adopted outside this framework, for example, within the European Court on Human Rights’ jurisprudence, interculturalist concepts can easily be used to legitimize the violation of the rights of persons belonging to minorities.

KEYWORDS: Framework Convention for the Protection of National Minorities; European Convention on Human Rights; interculturalism; multiculturalism; assimilation; living together

1. INTRODUCTION

Multiculturalism as a method of diversity management has been increasingly problematised since the terrorist attacks of 11 September 2001. Critics have accused multiculturalism of prioritizing diversity above commonality and, in so doing, of leading to segregation and

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division.¹ Consequently, a shift from multiculturalism to interculturalism has been advocated by politicians and within international organisations, including UNESCO and the Council of Europe.² Significantly, in 2008, the Committee of Ministers of the Council of Europe adopted the ‘White Paper on Intercultural Dialogue: Living Together as Equals in Dignity’, which simultaneously pronounced that the multiculturalist experiment had failed and proposed ‘intercultural dialogue’ as the alternative.³ Although terms associated with interculturalism, such as ‘intercultural education’, have been used within the Council of Europe since the 1970s,⁴ the White Paper signaled the evolution of interculturalism into a comprehensive approach to diversity management. This development has gradually been mirrored in the jurisprudence of the European Court of Human Rights (ECtHR).⁵

Similarly, since the 1980s, the concept of interculturalism has been elaborated within academic literature, particularly in relation to ‘intercultural education’.⁶ However, it is only recently, through the work of Bouchard and Cantle that an attempt has been made to formulate interculturalism as a coherent alternative to multiculturalism for liberal democratic States.⁷ Multiculturalists have argued that the shift from multiculturalism to interculturalism simply represents a change in narrative⁸ or rhetoric.⁹ However, Taylor has conceded that the reported shift also denotes a change in emphasis from ‘multi’ or diversity to ‘inter’, in particular, integration.¹⁰

¹ See, for example, Joppke, ‘The Retreat of Multiculturalism and the Liberal State: Theory and Policy’ (2004) 55 *The British Journal of Sociology* 237 at 243; Cantle, *Interculturalism – The New Era of Cohesion and Diversity* (Palgrave Macmillan, 2012) at 53-90.

² Kymlicka, ‘Comment on Meer and Modood’ (2012) 33 *Journal of Intercultural Studies* 211 at 213.

³ Council of Europe, *White Paper on Intercultural Dialogue “Living Together as Equals in Dignity”* (Council of Europe Publishing, 2008) at 9.

⁴ Bunjes, ‘The Intercultural Milestone: The History of the Council of Europe’s “White Paper on Intercultural Dialogue”’ in Barrett (ed), *Interculturalism and Multiculturalism: Similarities and Differences* (Council of Europe Publishing, 2013) 43 at 43; Council of Europe Committee of Ministers, Council for Cultural Cooperation, 42nd Session (10th meeting as a Steering Committee) Delphi (Greece), 1-4 June 1982, Meeting Report, CM(82) 137/CDCC (82) 35/ at 22, 36.

⁵ *SAS v France* Application No 43835/11, Merits and Just Satisfaction, 1 July 2014; *Dogru v France* Application No 27058/05, Merits, 4 December 2008, at para 62.

⁶ See for example, Albert and Triandis, ‘Intercultural Education for Multicultural Societies: Critical Issues’ (1985) 9 *International Journal of Intercultural Relations* 319; Fennes and Hapgood, *Intercultural Learning in the Classroom: Crossing Borders* (Cassell, 1997); Salvadori, ‘The Difficulties of Interculturalism’ (1997) 8 *European Journal of Intercultural Studies* 185.

⁷ Bouchard and Taylor, *Building the Future: A Time for Reconciliation Report* (2008), available at <https://www.mce.gouv.qc.ca/publications/CCPARDC/rapport-final-integral-en.pdf> [last accessed 16 May 2017]; Bouchard, ‘What is Interculturalism?’ (2011) 56 *McGill Law Journal* 435; Cantle, *supra* n 1; Cantle, ‘National Identity, Plurality and Interculturalism’ (2014) 85 *The Political Quarterly* 312.

⁸ Kymlicka, *supra* n 2 at 213.

⁹ Taylor, ‘Interculturalism or Multiculturalism’ (2012) 38 *Philosophy and Social Criticism* 413 at 416.

¹⁰ *Ibid.*

Whilst multiculturalism has been broadly accepted to align with the pursuit of international human rights standards,¹¹ it is now important to examine the compatibility of interculturalism with international human rights law. Concepts associated with interculturalism such as ‘integration’ and ‘societal cohesion’ have been the focus of academic discussion in the field of international human rights law.¹² The original contribution made by this article lies in its exploration of the implications of the adoption of interculturalism as a comprehensive approach to diversity management for the protection of the rights of persons belonging to minorities in Europe. Specifically, this article examines the extent to which the core components of interculturalism align with international human rights standards and have been furthered, in practice, by human rights institutions.

This article draws on the body of interculturalist literature; however, particular emphasis is placed on the work of Bouchard and Cantle, the main proponents of a coherent vision of interculturalism. It is argued that while the shift from multiculturalism to interculturalism appears to be benign from a human rights perspective, terms and concepts associated with interculturalism have the potential to take on assimilationist interpretations. Forced or involuntary assimilation violates the human rights of persons belonging to minorities.¹³ Thus, if interculturalism is to be consistent with international human rights law, it must be adopted within a framework that recognizes the vulnerability of persons belonging to minorities to human rights violations. Consequently, interculturalism must be allied with a minority rights (multiculturalist) framework rather than being understood as an entirely separate method of diversity management.

This article, first, introduces interculturalist theory before exploring its compatibility with international human rights standards. This reveals the potential for interculturalism to be conflated with assimilation in violation of international minority rights standards. Second, it

¹¹ McGoldrick, ‘Multiculturalism and its Discontents’ (2005) 5 *Human Rights Law Review* 27 at 35; Xanthaki, ‘Multiculturalism and International Law: Discussing Universal Standards’ (2010) 32 *Human Rights Quarterly* 21 at 22-3.

¹² Medda-Windischer, *Old and New Minorities: Reconciling Diversity and Cohesion – A Human Rights Model for Minority Integration* (Nomos, 2009); Henrard, ‘Tracing Visions of Integration and/or Minorities: An Analysis of the Supervisory Practice of the FCNM’ (2011) 13 *International Community Law Review* 333; Berry ‘“New” Minorities, Integration Policies and the UN Declaration on Minorities’ in Caruso and Hofmann (eds), *The United Nations Declaration on Minorities: An Academic Account on the Occasion of its 20th Anniversary* (Brill, 2015) 192; Xanthaki, ‘Against Integration, For Human Rights’ (2016) 20 *International Journal of Human Rights* 815.

¹³ UN Commission on Human Rights, ‘Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities’, 4 April 2005, E/CN.4/Sub.2/AC.5/2005/2 at para 2; Council of Europe, *Framework Convention for the Protection of National Minorities and Explanatory Report*, H(1995)010 at para 5; Article 8(1) UN Declaration on the Rights of Indigenous Peoples, UN Doc A/RES/61/295 (2007).

examines the interpretation of interculturalist concepts by human rights bodies within the Council of Europe. The Framework Convention for the Protection of National Minorities (FCNM)¹⁴ provides an example of the adoption of interculturalism within a minority rights (multiculturalist) framework, whereas the freedom of religion or belief jurisprudence of the ECtHR provides an example of the adoption of interculturalism outside this framework. This examination reveals the extent to which interculturalist concepts take on assimilationist connotations when adopted outside a minority rights framework. The Advisory Committee to the FCNM (AC-FCNM) does not conflate interculturalism with assimilation and, in practice, has remedied some of the failings of interculturalism in this respect. In contrast, terms associated with interculturalism have been (mis)appropriated by States to legitimize assimilationist policies in the ECtHR. This not only undermines the human rights of persons belonging to minorities but also the pursuit of the interculturalist vision.

2. THE IMPACT OF THE SHIFT FROM MULTICULTURALISM TO INTERCULTURALISM ON INTERNATIONAL HUMAN RIGHTS

Multiculturalism has long been thought to align with the aims and values of the international human rights regime. While it is not a consistent and coherent policy,¹⁵ multiculturalism pursues similar aims to the minority rights regime, by recognizing the right of non-dominant groups to preserve, practice and protect their cultures.¹⁶ Consequently, Xanthaki has proposed that ‘current human rights law endorses the components of multicultural policies and reflects a multicultural vision’.¹⁷ However, multiculturalism has been blamed for segregation,¹⁸ riots,¹⁹ terrorism²⁰ and the alleged failure of European Muslims to integrate.²¹ As a result, Levey notes:

¹⁴ Framework Convention for the Protection of National Minorities ETS No 157, entered into force 1 February 1998.

¹⁵ Murphy, *Multiculturalism: A Critical Introduction* (Routledge, 2012) at 6.

¹⁶ Article 27 ICCPR.

¹⁷ Xanthaki, *supra* n 11 at 22-3.

¹⁸ Joppke, *supra* n 1; Cantle, *supra* n 1.

¹⁹ Cantle, *Community Cohesion: A Report of the Independent Review Team* (Home Office, 2001) available at: tedcantle.co.uk/pdf/communitycohesion%20cantlereport.pdf [last accessed 29 March 2018] at para 2.1.

²⁰ Abbas, ‘Muslim Minorities in Britain: Integration, Multiculturalism and Radicalism in the Post-7/7 Period’ (2007) 28 *Journal of Intercultural Studies* 287 at 288; Vertovec, ‘Towards Post-Multiculturalism? Changing Communities, Conditions and Contexts of Diversity’ (2010) 61 *International Social Science Journal* 83 at 90.

²¹ Cantle, *supra* n 1 at 116.

[I]n Europe, in the wake of militant Islam and the moral panic over Muslim immigration and integration, interculturalism or “intercultural dialogue” is being advocated as an alternative to multiculturalism, offering a more acceptable set of principles and arrangements for the state management of cultural diversity.²²

The shift from multiculturalism to interculturalism has, notably, been endorsed by international organisations with a human rights mandate including the Council of Europe and UNESCO.²³ This section, first, introduces the main approaches within interculturalist theory. Second, it explores the compatibility of interculturalism with the international human rights regime. It is argued that although interculturalism, for the most part, aligns with international human rights law, specific elements of the two main interculturalist theories have the potential to be interpreted to support measures of assimilation, contrary to international minority rights standards.

A. Introducing Interculturalism

Interculturalism, much like multiculturalism, is a contested term and multiple interpretations of the concept exist. Nonetheless, Cantle suggests ‘there would appear to be some acceptance that its key features are a sense of openness, dialogue and interaction’.²⁴ Like multiculturalists, interculturalists see diversity as an asset that should be preserved,²⁵ and expressly oppose measures of assimilation.²⁶ From a European perspective, the Council of Europe’s White Paper explains that intercultural dialogue has learnt from past attempts at diversity management and, thus, ‘takes from assimilation the focus on the individual; it takes from multiculturalism the recognition of cultural diversity. And it adds the new element, critical to integration and social cohesion, of dialogue on the basis of equal dignity and

²² Levey, ‘Interculturalism vs. Multiculturalism: A Distinction without a Difference?’ (2012) 33 *Journal of Intercultural Studies* 217 at 218.

²³ Council of Europe, supra n 3 at 19; UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, *adopted* 20 Oct. 2005, 33d Sess., UNESCO Doc. CLT/CEI/DCE/2007/PI/32 (2005) (*entered into force* 18 March 2007).

²⁴ Cantle, ‘Interculturalism as a New Narrative for the Era of Globalisation and Super-Diversity’ in Barrett (ed), supra n 4, 69 at 78.

²⁵ Meer, Modood and Zapata-Barerro, ‘A Plural Century: Situating Interculturalism and Multiculturalism’ in Meer, Modood and Zapata-Barrero (eds), *Multiculturalism and Interculturalism - Debating the Dividing Lines* (Edinburgh University Press, 2016) 1 at 9; Bouchard, ‘Interculturalism: What Makes it Distinctive?’ in Barrett (ed), supra n 4, 93 at 95.

²⁶ Taylor, ‘Foreword’ in Meer, Modood and Zapata-Barrero (eds), supra n 25, vii at vii; Meer, Modood and Zapata-Barrero, supra n 25 at 9; Bouchard, supra n 7 at 78.

shared values'.²⁷ Consequently, although interculturalism attempts to respond to critiques of multiculturalism, there is significant overlap between interculturalist and multiculturalist policies.²⁸ Nonetheless, in practice the points of departure of the two approaches are different. Multiculturalism focuses on cultural rights 'and thus has an initial understanding of interpersonal comparisons that is centered in what is different'.²⁹ In contrast, interculturalism is 'a strategy to manage a dynamic process of interaction based in what is common'.³⁰

Drawing on the dominant schools of thought, Zapata-Barrero has identified three different strands of interculturalist thought: the *contractual*, *cohesion* and *constructivist* strands.³¹ The *contractual* strand focuses on the vertical relationship between individuals, in particular immigrants, and 'the basic structures of society' with the aim of 'enhancing stability in a diverse society'.³² Bouchard describes interculturalism as 'a search for balance and mediation between often-competing principles, values and expectations'.³³ This approach focuses on balancing the interests of the majority, not least the preservation of national identity, with the protection of the rights of minorities.³⁴ The presence of the majority's culture in State institutions and broader society is valid.³⁵ Minorities should 'adapt to their host society, adhere to its basic values and respect its institutions'.³⁶ However, the reasonable accommodation of minority practices is also necessary to prevent discrimination, facilitate integration and defuse tensions.³⁷ Notably, this strand of interculturalism was originally developed in the context of Quebec;³⁸ however, Bouchard has asserted that it is of broader relevance to the West.³⁹ While this interpretation of interculturalism has been criticized by Cantle for being 'a progressive variant of multiculturalism',⁴⁰ it is distinct from

²⁷ Council of Europe, *supra* n 3 at 19.

²⁸ Cantle, *supra* n 1 at 142; Barrett, 'Introduction - Interculturalism and Multiculturalism: Concepts and Controversies' in Barrett (ed), *supra* n 4, 15 at 26; Cantle, *supra* n 24 at 84.

²⁹ Zapata-Barrero, 'Exploring the Foundations of the Intercultural Policy Paradigm: A Comprehensive Approach (2016) 23 *Identities: Global Studies in Culture and Power* 155 at 157.

³⁰ *Ibid.*

³¹ *Ibid.*, see generally.

³² *Ibid.*, at 160; Zapata-Barrero, 'Theorising Intercultural Citizenship' in Meer, Modood and Zapata-Barrero (eds), *supra* n 25, 53 at 67.

³³ Bouchard, *supra* n 7 at 461.

³⁴ Zapata-Barrero, *supra* n 29 at 162.

³⁵ Bouchard, *supra* n 7 at 458.

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*, at 454.

³⁹ *Ibid.*, at 445, 468.

⁴⁰ Cantle, *supra* n 1 at 141. See also, Iacovino, 'Commentary: 'Interculturalism vs Multiculturalism - How Can We Live Together in Diversity' in Antonsich (ed), 'Interculturalism versus Multiculturalism - The Cantle-Modood Debate (2016) 16 *Ethnicities* 470 at 492.

multiculturalism insofar as it supports the granting of *ad hoc* precedence to the majority or ‘foundational culture’.⁴¹

The *cohesion* strand is based on Allport’s contact theory, which emphasizes the role that positive interactions between citizens play in the creation of societal cohesion and prejudice reduction.⁴² Such interactions, Loobuyk explains, seek ‘to break down prejudices, stereotypes and misconceptions of others, and to generate mutual understanding, reciprocal identification, societal trust and solidarity’.⁴³ Unlike the *contractual* strand, the *cohesion* strand is not concerned with the perpetuation and preservation of minority or majority cultures, as both are understood to be in a constant state of flux.⁴⁴ Instead, the *cohesion* strand requires the creation of spaces and opportunities for intercultural interactions to take place,⁴⁵ the provision of intercultural education,⁴⁶ as well as the removal of barriers to successful interactions.⁴⁷ Although developed in the context of the United Kingdom, Cantle has highlighted the *cohesion* strand’s relevance to Europe more generally.⁴⁸ Significantly, this approach aligns most closely with the interpretation of interculturalism adopted in the Council of Europe’s White Paper, which emphasizes the importance of democratic citizenship and participation, intercultural competence and intercultural spaces.⁴⁹ Finally, the *constructivist* strand views diversity as an asset that should be utilized in order to promote development.⁵⁰ In practice, ‘[t]his means redesigning institutions and policies in all fields to treat diversity as a potential resource and a public good, and not as a nuisance to be contained’.⁵¹ This strand of interculturalism remains relatively underdeveloped in the literature and, therefore, is not the focus of this article.

⁴¹ Bouchard, *supra* n 7 at 445, 468; Modood, ‘Multiculturalism, Interculturalisms and the Majority’ (2014) 43 *Journal of Moral Education* 302 at 309.

⁴² See generally, Allport, *The Nature of Prejudice* (Addison-Wesley, 1954). See, further, Cantle, *supra* n 24 at 80; Zapata-Barrero, *supra* n 29 at 160.

⁴³ Loobuyk, ‘Towards an Intercultural Sense of Belonging Together: Reflections on the Theoretical and Political Level’ in Meer, Modood and Zapata-Barrero (eds), *supra* n 25, 225 at 230.

⁴⁴ Cantle, *supra* n 24 at 83.

⁴⁵ *Ibid.*, at 79.

⁴⁶ Bekemans, ‘Educational Challenges and Perspectives in Multiculturalism vs. Interculturalism: Citizenship Education for Intercultural Realities’ in Barrett (ed), *supra* n 4, 169 at 177.

⁴⁷ Barrett, ‘Intercultural Competence: A Distinctive Hallmark of Interculturalism?’ in Barrett (ed), *supra* n 4, 147 at 157.

⁴⁸ See generally, Cantle, ‘The Case for Interculturalism, Plural Identities and Cohesion’ in Meer, Modood and Zapata-Barrero (eds), *supra* n 25, 133.

⁴⁹ Council of Europe, *supra* n 3 at 28-33; Levey, ‘Diversity, Duality and Time’ in Meer, Modood and Zapata-Barrero (eds), *supra* n 25, 201 at 205.

⁵⁰ Zapata-Barrero, *supra* n 29 at 163.

⁵¹ Zapata-Barrero, *supra* n 32 at 64.

Both the *contractual* and *cohesion* strands of interculturalism recognize the importance of intercultural interactions.⁵² However, Bouchard's interculturalism prioritizes the perpetuation of the identity of the majority, whereas, the *cohesion* strand emphasizes the plural and fluid nature of identity. This distinction can be attributed to the nationalist and cosmopolitan foci of the respective strands of interculturalism.⁵³ Nonetheless, significant commonalities and intersections can be identified across the strands. The 'search for balance' advocated by Bouchard is dependent upon dialogue between citizens, a key element of the *cohesion* strand.⁵⁴ The conditions for the *cohesion* strand are not only dependent upon 'intercultural competence' but also State policies to combat structural and institutional barriers to intercultural dialogue (the *contractual* strand). All three strands of interculturalism intersect and reinforce one another and, therefore, as recognized by Zapata-Barrero, there is a need to 'to balance them in a comprehensive framework'⁵⁵ if the interculturalist project is to achieve its aim of facilitating the creation of cohesive societies. Consequently, despite the identified internal inconsistencies, this article draws upon interculturalism as a whole, with a particular emphasis on the *contractual* and *cohesion* strands.

B. Interculturalism and the International Human Rights Regime

This section turns to the compatibility of interculturalism with international human rights law. Despite the apparent common aims of international human rights law and multicultural policies, in practice, the language of multiculturalism has not been adopted or endorsed in international and regional human rights instruments. In contrast, interculturalist concepts have a long history in the Council of Europe, in particular, 'intercultural education' and 'intercultural dialogue'.⁵⁶ However, the Council of Europe, along with UNESCO, only recently sought to develop interculturalism and intercultural dialogue as an alternative to multiculturalism.⁵⁷ Notably, the language of interculturalism has been adopted in the

⁵² Bouchard, *supra* n 7 at 448; Cantle, *supra* n 48 at 154-5.

⁵³ Parekh, 'Afterword: Multiculturalism and Interculturalism - A Critical Dialogue' in Meer, Modood and Zapata-Barrero (eds), *supra* n 25, 266 at 276.

⁵⁴ Bouchard, *supra* n 25 at 97.

⁵⁵ Zapata-Barrero, *supra* n 29 at 167.

⁵⁶ Bunjes, *supra* n 4 at 43. Council of Europe, *supra* n 3 at 22, 36.

⁵⁷ Kymlicka, *supra* n 2 at 213; Loobuyk, *supra* n 43 at 225; Kymlicka, 'Defending Diversity in an Era of Populism: Multiculturalism and Interculturalism Compared' in Meer, Modood and Zapata-Barrero (eds), *supra* n 25, 158 at 161.

FCNM,⁵⁸ by the ECtHR⁵⁹ and in the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Furthermore, the ECtHR's *dicta* 'pluralism, tolerance and broadmindedness are hallmarks of a "democratic society"',⁶⁰ has been interpreted by scholars to embody multiculturalism.⁶¹ However, it can equally be argued to align with interculturalism, insofar as interculturalism promotes 'the pluralist transformation of public space, institutions and civic culture',⁶² whilst recognizing the need to develop the 'cultural navigational skills' of citizens.⁶³

At a fundamental level, interculturalists and international human rights standards have affirmed that measures to encourage the integration of persons belonging to minorities are legitimate.⁶⁴ In contrast, forced or unwanted assimilation have been expressly recognized to violate the rights of persons belonging to minorities.⁶⁵ While assimilation is a one-way process of adaptation by the minority,⁶⁶ integration is a two-way process, within which both the minority and broader society make concessions in order to adjust to increasing diversity.⁶⁷ Raz suggests that any demand for assimilation 'is liable to undermine people's dignity and self-respect ... It shows that the state, their state, has no respect for their culture, finds it inferior and plots its elimination'.⁶⁸ Consequently, forced or unwanted assimilation have the potential to increase the insecurity of persons belonging to minorities and undermine the primary aim of interculturalism, societal cohesion.

The pursuit of interculturalism has not only been endorsed within the international human rights framework, it has also been formulated as a State obligation. The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural

⁵⁸ Article 6(1) FCNM.

⁵⁹ *SAS*, supra n 5.

⁶⁰ See, for example, *Leyla Şahin v Turkey* Application No 44774/98, Merits and Just Satisfaction, 10 November 2005 at para 108; *SAS*, supra n 5 at para 128.

⁶¹ McGoldrick, supra n 11 at 35.

⁶² Bloomfield and Bianchini, *Planning for the Intercultural City* (Comedia, 2004) cited in Cattle, supra n 1 at 156.

⁶³ Cattle, supra n 7 at 312; Zapata-Barrero, supra n 32 at 65; Barrett, supra n 28 at 26.

⁶⁴ Article 5(2) FCNM; UN Commission on Human Rights, supra n 13 at para 21; OSCE, *The Ljubljana Guidelines on Integration of Diverse Societies & Explanatory Note* (2012); Bouchard, 'Quebec Interculturalism and Canadian Multiculturalism' in Meer, Modood and Zapata-Barrero (eds), supra n 25 at 78; Cattle, supra n 24, 77 at 84.

⁶⁵ UN Commission on Human Rights, supra n 13 at paras 21-23; Council of Europe, supra n 13 at para 45; article 8(1) UNDRIP; Taylor, supra n 26 at vii; Wilson, 'The Urgency of Intercultural Dialogue in Europe of Insecurity' in Barrett (ed), supra n 4, 53 at 62; Zapata-Barrero, supra n 32 at 54.

⁶⁶ In the American context, there have been attempts to reconceptualize assimilation as a two-way process, however, within Europe, the focus of this article, it is still understood to denote a one-way process. See further, Alba and Nee, 'Rethinking Assimilation Theory for a New Era of Immigration' (1997) 31 *The International Migration Review* 826.

⁶⁷ Modood, *Multiculturalism – A Civic Idea*, 2nd edn (Polity Press, 2013) at 44.

⁶⁸ Raz, 'Multiculturalism' (1998) 11 *Ratio Juris* 193 at 200.

Expressions aims to facilitate ‘wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace’ and ‘to foster interculturality’.⁶⁹ Article 4 defines ‘interculturality’ as ‘the existence and equitable interaction of diverse cultures and the possibility of generating shared cultural expressions through dialogue and mutual respect’.⁷⁰ Similarly, Ringelheim has suggested that article 6(1) FCNM, which promotes intercultural dialogue, endeavours to

bring the FCNM beyond a mere ideal of peaceful coexistence of majority and minorities ... [it] is not only about enabling minority members to maintain their distinctiveness. It is also geared towards ensuring their inclusion and participation on an equal footing in the society at large, as well as promoting interactions, exchanges and intermingling between people across ethnic, cultural, linguistic and religious lines.⁷¹

The UNESCO and FCNM understandings of interculturality and intercultural dialogue focus on cultural exchange and interactions and, thus, align with the *cohesion strand* of interculturalism.⁷² However, the purpose of article 6(1) FCNM is also similar to Bouchard’s vision of interculturalism as ‘a sustained effort aimed at connecting majorities and minorities’.⁷³ Therefore, both the *contractual* and *cohesion* strands of interculturalism find expression within international human rights instruments.

Although the term interculturalism is not utilized in the International Bill of Rights, UN treaty bodies and interculturalists have adopted similar definitions of culture. Specifically, the UN Committee on Economic, Social and Cultural Rights (CESCR) has recognized that culture is ‘a living process, historical, dynamic and evolving, with a past, a present and a future’.⁷⁴ Interculturalists recognize that culture is a ‘dynamic process’⁷⁵ that is ‘constantly evolving and changing’.⁷⁶ Furthermore, both Cantle and CESCR have

⁶⁹ Article 1 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

⁷⁰ Notably, the 2005 UNESCO Convention was not intended to provide a model of diversity management for multicultural societies.

⁷¹ Ringelheim, ‘Minority Rights in a Time of Multiculturalism—The Evolving Scope of the Framework Convention on the Protection of National Minorities’ (2010) 10 *Human Rights Law Review* 99 at 118.

⁷² Cantle, *supra* n 1 at 155.

⁷³ Bouchard, *supra* n 7 at 461.

⁷⁴ Committee on Economic, Social and Cultural Rights, General Comment No 21: Article 15(1)(a) The Right of Everyone to Take Part in Cultural Life, 21 December 2009, E/C.12/GC/21 at para 11.

⁷⁵ Cantle, *supra* n 1 at 143.

⁷⁶ Barrett, *supra* n 47 at 149. See also, Bouchard and Taylor, *supra* n 7 at 123.

acknowledged that individuals have plural, intersecting and increasingly cosmopolitan identities.⁷⁷

On the basis of this understanding of culture, interculturalists have criticized multiculturalist approaches to diversity management; policies that seek to preserve minority cultures risk essentialization,⁷⁸ ‘putting people into boxes’⁷⁹ and legitimizing illiberal practices.⁸⁰ Although this suggests that interculturalists have rejected targeted minority rights standards, the drafters of international minority rights instruments and the AC-FCNM have addressed these criticisms. Both the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁸¹ and the FCNM refer to ‘persons belonging to minorities’ rather than minorities *qua* minorities and, thus, prioritize the human rights of individuals above the protection of the group. The individualised nature of minority rights protection is also demonstrated by the right to self-identify, article 3 FCNM, which ‘extends to multiple affiliations’.⁸² This closely aligns with interculturalism, which ‘is about first asking how people recognize their identities, and it then respects their self-identification’.⁸³ The AC-FCNM has also attempted to avoid the essentialization of minority identities by insisting that States avoid privileging one minority representative association to the disadvantage of others⁸⁴ as ‘such differential treatment between organisations of minorities is not conducive to pluralism and internal democracy within minorities’.⁸⁵ Finally, the interculturalist concern that the protection of culture may legitimize and perpetuate illiberal minority practices has also been addressed within minority rights standards and by

⁷⁷ Committee on Economic, Social and Cultural Rights, *supra* n 74 at para 12; Cantle, *supra* n 1 at 211.

⁷⁸ Cantle, *supra* n 7 at 316; Zapata-Barrero, *supra* n 29 at 158; Bunjes, *supra* n 4 at 49; Cantle, *supra* n 48 at 142.

⁷⁹ Cantle, *supra* n 24 at 74; Zapata-Barrero, *supra* n 29 at 158-9. Cantle, *supra* n 48 at 142.

⁸⁰ Meer and Modood, ‘Interculturalism, Multiculturalism and Citizenship’ in Meer, Modood and Zapata-Barrero (eds), *supra* n 25, 27 at 45. Multiculturalists disagree with this characterisation of multiculturalism. See Meer and Modood, ‘How does Interculturalism Contrast with Multiculturalism?’ (2012) 33 *Journal of Intercultural Studies* 175. See also, Kymlicka, *supra* n 2; Modood, *supra* n 41 at 309; Parekh, *supra* n 53 for further discussion of this point.

⁸¹ UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities UN doc A/RES/47/135.

⁸² AC-FCNM, *Thematic Commentary No. 4 -The Scope of Application of the Framework Convention for the Protection of National Minorities* ‘The Framework Convention: a key tool to managing diversity through minority rights’ adopted on 27 May 2016 ACFC/56DOC(2016)001 at para 13.

⁸³ Zapata-Barrero, *supra* n 29 at 158-9.

⁸⁴ AC-FCNM, ‘Second Opinion on Spain’ adopted on 22 February 2007 ACFC/OP/II(2007)001 at para 149.

⁸⁵ AC-FCNM, ‘Second Opinion on Romania’ adopted on 24 November 2005 ACFC/OP/II(2005)007 at para 107. See also, AC-FCNM, *supra* n 82 at para 41.

their monitoring bodies. Minority rights protection is subject to the requirement that practices conform with international human rights law.⁸⁶

Interculturalism and international human rights law appear to have adopted a similar approach to culture and the challenges posed by diversity. Yet, interculturalism remains problematic from an international human rights perspective. Despite the different rationales underpinning the two instruments, the primary aims of the FCNM and the 2005 UNESCO Convention are the maintenance of diversity and the promotion and protection of different cultures. Thus, multiculturalist and interculturalist visions have been combined in these instruments. This is not problematic *per se*; multiculturalists and interculturalists have suggested that it is possible to reconcile the two approaches.⁸⁷ However, questions over the compatibility of interculturalism with international human rights standards arise when interculturalism is implemented outside a multiculturalist framework. Specifically, although interculturalists have expressly opposed assimilation,⁸⁸ two elements of interculturalism have distinctly assimilationist connotations: Bouchard's recognition of the *ad hoc* precedence of the 'foundational culture'⁸⁹ and Cantle's insistence that interculturalism requires 'an end to the privileges of financial and representational benefits enjoyed by people of supposedly single identities'.⁹⁰

Bouchard's concept of *ad hoc* precedence acknowledges that the majority may feel threatened by the presence of minority cultures, 'not only in terms of its rights, but also in terms of its values, traditions, language, memory, and identity (not to mention its security)'.⁹¹ Consequently, it is legitimate for the culture of the majority, as the symbolic foundation of society, to be afforded precedence.⁹² Rather than sidelining the majority culture in order to protect and promote minority cultures, interculturalism seeks to balance the concerns of the majority with those of minorities, in order to create a cohesive society. Thus, *ad hoc* precedence appears to align with the ECtHR's margin of appreciation, insofar as it allows

⁸⁶ Article 4(2) UN Declaration on Minorities; article 4 UNESCO Universal Declaration on Cultural Diversity; article 19, 22 and 23 FCNM; Human Rights Committee, General Comment No 23: The Rights of Minorities (Art 27), 8 April 1994, CCPR/C/21/Rev.1/Add.5 at para 8; Council of Europe, *supra* n 13 at para 91; UN Commission on Human Rights, *supra* n 13 at para 57.

⁸⁷ Levey, *supra* n 49 at 203; Modood and Meer, 'Interculturalism, Multiculturalism or Both?' (2012) 3 *Political Insight* 30 at 33; Loobuyk, *supra* n 43 at 226.

⁸⁸ Taylor, *supra* n 26 at vii; Meer, Modood and Zapata-Barrero, *supra* n 25 at 9; Bouchard, *supra* n 64 at 78; Zapata-Barrero, *supra* n 32 at 54.

⁸⁹ Bouchard, *supra* n 64 at 83.

⁹⁰ Cantle, *supra* n 24 at 85.

⁹¹ Bouchard, *supra* n 7 at 445.

⁹² Bouchard, *supra* n 64 at 83.

States discretion to reconcile the competing interests of different groups in society.⁹³ However, it is significant that the UN Human Rights Committee and the AC-FCNM do not permit States the same discretion.⁹⁴

Ad hoc precedence can be defended on the basis that it simply recognizes the inherent bias that all liberal States display in favour of the culture of the majority.⁹⁵ Yet, by institutionalizing this bias, the award of *ad hoc* precedence risks further privileging the culture of the majority. The prioritization of the ‘foundational culture’ has the potential to place the onus of adaptation on persons belonging to minorities and, thus, may inadvertently lead integration to be construed as a one-way process. Bouchard has recognized that *ad hoc* precedence must be carefully circumscribed to avoid the abuse of the dominant position.⁹⁶ In particular, he acknowledges the need for *ad hoc* precedence to be balanced with minority rights and reasonable accommodations.⁹⁷ Nonetheless, there is still potential for the abuse of the dominant position to result in the unwanted assimilation of minorities within this model of interculturalism. Indeed, Bouchard has acknowledged that ‘during the recent controversies in Europe, it sometimes came to acquire this kind of connotation’.⁹⁸ Similarly, critics of the ECtHR’s margin of appreciation have noted that deference to democratic States risks subjecting minorities to the tyranny of the majority.⁹⁹

In contrast, Cantle does not support the prioritization of the majority culture, as identities, including the national identity, are not static.¹⁰⁰ Instead, he promotes the ‘[w]ithdrawal of state support for promotion of particular cultural and religious identities’,¹⁰¹ in order to ‘avoid privileging one over the other’.¹⁰² This element of Cantle’s theory is underpinned by a concern that State support has the potential to reify single identities.¹⁰³ Nonetheless, much like *ad hoc* precedence, the withdrawal of State support for minority

⁹³ *Kokkinakis v Greece* Application No 14307/88, Merits and Just Satisfaction, 25 May 1993, at para 33.

⁹⁴ See further, Berry, ‘A Tale of Two Instruments: Religious Minorities and the Council of Europe’s Rights Regime’ (2012) 30 *Netherlands Quarterly of Human Rights* 10 at 19-22; McGoldrick ‘A Defence of the Margin of Appreciation and an Argument for its Application by the Human Rights Committee’ (2016) 65 *International and Comparative Law Quarterly* 21 at 41-2.

⁹⁵ Bouchard, *supra* n 64 at 83. Cf. *Young, James and Webster v United Kingdom* Application No 7601/76 7806/77, Merits, 13 August 1981, at para. 63.

⁹⁶ Bouchard, *supra* n 64 at 83.

⁹⁷ Bouchard, *supra* n 25 at 96.

⁹⁸ Bouchard, *supra* n 7 at 449.

⁹⁹ Benvenisti, ‘Margin of Appreciation, Consensus, and Universal Standards’ (1998-1999) 31 *New York University Journal of International Law and Policy* 843 at 852.

¹⁰⁰ Cantle, *supra* n 1 at 157.

¹⁰¹ *Ibid.*, at 90.

¹⁰² *Ibid.*, at 208.

¹⁰³ Cantle, *supra* n 24 at 41.

identities has the potential to lead interculturalist policies to become blurred with assimilationist policies and result in *de jure* rather than *de facto* equal treatment between majority and minority cultures.

As noted by Xanthaki, '[t]he neutral state does not promote justice; rather it maintains the status quo. Members of minority cultural groups do not have the same opportunities to live and work in their culture and make their own choices to the same degree as the members of majority cultures'.¹⁰⁴ Cantle's interculturalism risks reinforcing structural inequalities by failing to recognize the inherent bias of the liberal, democratic State in favour of the culture of the majority. This bias is not problematic *per se* but minority rights and multiculturalists recognize that additional measures are required to enable minorities to resist involuntary assimilation.¹⁰⁵ Measures of accommodation are not the privileges that Cantle suggests, but instead seek to place minority cultures on a par with the majority culture.¹⁰⁶ The withdrawal of State support to assist the preservation of minority identities, as advocated by Cantle, violates minority rights standards, which establish that States have positive obligations in this respect.¹⁰⁷ Notably, there is a divergence within the interculturalist camp in relation to reasonable accommodation, as both Barrett and Bouchard have accepted the legitimacy of such measures.¹⁰⁸

While professing to support the integration of diverse societies and rejecting assimilation,¹⁰⁹ the forms of interculturalism advocated by both Bouchard and Cantle have assimilationist implications. Measures taken in pursuit of interculturalism that result in the unwanted assimilation of minorities violate international human rights law and are likely to be counterproductive and undermine integration and societal cohesion.¹¹⁰ Nonetheless, it is possible for the reported shift from multiculturalism towards interculturalism to be compatible with international human rights standards, if interculturalist policies sufficiently counter the bias that liberal societies display in favour of the culture of the majority.

3. INTERCULTURALISM WITHIN/OUTSIDE A MULTICULTURALIST FRAMEWORK

¹⁰⁴ Xanthaki, *supra* n 11 at 29.

¹⁰⁵ UN Commission on Human Rights, *supra* n 13 at para 2; Article 5(2) FCNM; Xanthaki, *supra* n 11 at 29.

¹⁰⁶ Bouchard, *supra* n 7 at 438.

¹⁰⁷ Human Rights Committee, *supra* n 86 at para 6.2; Council of Europe, *supra* n 13 at para 43; UN Commission on Human Rights, *supra* n 13, para 33. See also, Henrard, *supra* n 12 at 340.

¹⁰⁸ Barrett, *supra* n 28 at 26; Bouchard, *supra* n 25 at 96.

¹⁰⁹ Council of Europe, *supra* n 3 at 14; Bouchard, *supra* n 7 at 449; Cantle, *supra* n 24 at 38.

¹¹⁰ Taylor, *supra* n 9 at 421.

The Council of Europe has been one of the primary proponents of the shift from multiculturalism to interculturalism. The role that interculturalism can play in integrating diverse societies has been recognized in the Council of Europe's White Paper on Intercultural Dialogue and article 6(1) FCNM. However, the above exposition has revealed that interculturalism has the potential to take on assimilationist interpretations and violate the rights of persons belonging to minorities. Interculturalists do not support assimilation and assimilationist policies are recognized to undermine societal cohesion, the primary goal of interculturalism.¹¹¹

This section examines the interpretation of terms associated with interculturalism by human rights bodies, in order to test the hypothesis that interculturalism risks being conflated with assimilation if adopted outside a framework that recognizes the vulnerability of minorities to human rights abuses. The Council of Europe provides a particularly appropriate case study as it provides examples of the pursuit of interculturalism within a framework that recognizes the specific vulnerabilities of minorities (FCNM) and outside such a framework (European Convention on Human Rights (ECHR)¹¹²). This section argues that while 'intercultural dialogue' has been interpreted by the AC-FCNM in a manner that broadly aligns with interculturalism, the ECtHR has allowed concepts and terms associated with interculturalism to be interpreted in a way that legitimizes assimilationist policies.

Before proceeding, it is important to acknowledge that the two bodies explored in this section have different mandates and that this inevitably impacts the way they approach the rights of persons belonging to minorities.¹¹³ The AC-FCNM is tasked with monitoring a minority rights instrument and, therefore, is particularly cognisant of the vulnerability of persons belonging to minorities to human rights abuses, including forced or unwanted assimilation. Furthermore, the AC-FCNM reviews the general situation prevailing in a State through a State reporting procedure, with the aim of progressively improving the protection of rights.¹¹⁴ In contrast, the ECtHR does not have a minority rights mandate, as the ECHR does not contain a minority rights provision and attempts to adopt a minority rights protocol

¹¹¹ Zapata-Barrero, *supra* n 32 at 63.

¹¹² Convention for the Protection of Human Rights and Fundamental Freedoms ETS No 005, entered into force 3 September 1953 (ECHR).

¹¹³ See further, Berry, 'The Siren's Call? Exploring the Implications of an Additional Protocol to the European Convention on Human Rights on National Minorities' (2016) 23 *International Journal on Minority and Group Rights* 1.

¹¹⁴ *Ibid.*, at 7.

have proven unsuccessful.¹¹⁵ Therefore, the ECtHR is not necessarily conscious of the potential for assimilationist measures to undermine the rights and dignity of persons belonging to minorities.¹¹⁶ As the ECtHR can only hear individual complaints, its role is to identify the borderline at which individual human rights violations occur rather than the general impact of a law or policy on a community.¹¹⁷ These differences influence the ability of the AC-FCNM and ECtHR to critically engage with State integration policies. Nonetheless, a review of their practice is valuable, as it reveals that the context in which interculturalist concepts are adopted has the potential to influence their interpretation.

A. Interculturalism within a Multicultural Framework - The Framework Convention for the Protection of National Minorities

The FCNM undeniably pursues a multiculturalist vision by seeking to preserve the distinct identity of persons belonging to national minorities. However, like interculturalists, the FCNM recognizes that it is legitimate for States to seek to integrate minorities, provided that policies or practices do not pursue assimilation.¹¹⁸ Rather than just seeking to preserve cultural differences, the FCNM also aims to create cohesive societies, through ‘intercultural dialogue’ contained in article 6(1) FCNM:

The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

¹¹⁵ Parliamentary Assembly to the Council of Europe (PACE), Recommendation 285 (1961) Rights of National Minorities; PACE Committee on Legal Affairs, ‘Report on Rights of National Minorities’, Doc. 1299, 26 April 1961; Report of the Committee of Experts on Human Rights to the Committee of Ministers, ‘Rights of National Minorities’ 1973 DH/Exp(73)47; PACE, Recommendation 1134 (1990) on the Rights of Minorities, 1 October 1990; PACE, Recommendation 1177 (1992) on the Rights of Minorities; PACE, Recommendation 1201 (1993) on an Additional Protocol on the Rights of National Minorities to the European Convention on Human Rights, 1 February 1993; PACE, Recommendation 1492 (2001) on the Rights of Minorities, 23 January 2001.

¹¹⁶ For further consideration of the impact of the ECtHR’s mandate on the protection of minority rights, see, Berry, ‘Democracy and the Preservation of Minority Identity: Fragmentation within the European Human Rights Framework’ (2017) 24 *International Journal on Minority and Group Rights* 295.

¹¹⁷ Brems, ‘Human Rights: Minimum and Maximum Perspectives’ (2009) 9 *Human Rights Law Review* 349 at 353.

¹¹⁸ Article 5(2) FCNM.

Barrett notes ‘intercultural dialogue is arguably *the* central feature of interculturalism’.¹¹⁹ As multiculturalist and interculturalist visions are combined within the FCNM, it is instructive to consider the extent to which the interpretation of article 6(1) FCNM by the AC-FCNM aligns with the requirements of interculturalism and whether it has taken on assimilationist connotations.

Within the *contractual* strand of interculturalism, Bouchard has recognized that minority identities are disadvantaged within the nation-State and that reasonable accommodations are required to counter this disadvantage.¹²⁰ Additionally, Zapata-Barrero has accepted that multiculturalism and interculturalism are complementary, rather than separate projects.¹²¹ Consequently, it can be deduced that the presence of a provision that pursues interculturalism within a multiculturalist treaty is not *prima facie* problematic from an interculturalist perspective. However, as previously explored, Cantle does not support differentiated rights for persons belonging to minorities and, in particular, has opposed State support for the preservation of minority identity.¹²² The focus here, article 6(1) FCNM, applies to ‘all persons living on their [the State’s] territory’ and, as a result, does not provide differentiated rights for persons belonging to minorities. While this suggests that article 6(1) FCNM could be interpreted compatibly with Cantle’s interculturalism, in practice, the AC-FCNM has often linked this provision with article 5(1) FCNM, which requires that States adopt measures to enable ‘persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity’. Henrard suggests that this is because ‘the promotion of the minority identity can also enhance mutual understanding and interaction, and thus integration’.¹²³ Conversely, the AC-FCNM has expressly recognized that ‘the promotion of tolerance and openness towards diversity’ pursues societal cohesion and allows persons belonging to national minorities ‘to proactively claim the rights contained in the Framework Convention’.¹²⁴ Thus, within the FCNM, the multiculturalist and interculturalist approaches to diversity management are complementary and mutually reinforcing. It is not possible for article 6(1) FCNM to be interpreted in a manner that is entirely compatible with Cantle’s interculturalism. However, this section reveals that, for the

¹¹⁹ Barrett, *supra* n 28 at 21.

¹²⁰ Bouchard, *supra* n 25 at 96.

¹²¹ Zapata-Barrero, *supra* n 32 at 54.

¹²² Cantle, *supra* n 1 at 90.

¹²³ Henrard, *supra* n 12 at 352.

¹²⁴ AC-FCNM, *supra* n 82 at para 53.

most part, interculturalists and the AC-FCNM have adopted analogous interpretations of the requirements of successful intercultural dialogue.

The AC-FCNM's Explanatory Report establishes that article 6(1) FCNM seeks:

to strengthen social cohesion ... by eliminating barriers between persons belonging to ethnic, cultural, linguistic and religious groups through the encouragement of intercultural organisations and movements which seek to promote mutual respect and understanding and to integrate these persons into society whilst preserving their identity.¹²⁵

Similarly, interculturalists view intercultural dialogue as a means to an end – societal cohesion – rather than an end in itself.¹²⁶ The purpose of article 6(1) FCNM aligns closely with the *cohesion* strand of interculturalism, a model that seeks to create cohesive societies through dialogue, interactions and inclusive participation in the public life of the State.¹²⁷

Integration is central to the interculturalist vision of cohesive societies. While integration is often interpreted to mean assimilation,¹²⁸ both interculturalists and the AC-FCNM have recognized that, in order to be successful, integration must be interpreted as a two-way process of mutual adaptation, 'that confers a joint responsibility to the majority and the minorities'.¹²⁹ In practice, however, the Opinions of the AC-FCNM have focused on the adaptation of the majority, and have ignored the steps needed to facilitate the adaptation of minorities.¹³⁰ This can be attributed to the focus of the FCNM on the rights of persons belonging to national minorities rather than the rights of majorities,¹³¹ and the concern that integration policies often place a disproportionate emphasis on the adaptation of minorities.¹³² Nonetheless, in its Fourth Thematic Commentary the AC-FCNM emphasized that,

¹²⁵ Council of Europe, *supra* n 13 at para 49.

¹²⁶ Zapata-Barrero, *supra* n 32 at 63.

¹²⁷ Gagnon and Iacovino, 'Interculturalism and Multiculturalism: Similarities and Differences' in Meer, Modood and Zapata-Barrero (eds), *supra* n 25, 104 at 116.

¹²⁸ See generally, Xanthaki, *supra* n 12.

¹²⁹ Bouchard, *supra* n 64 at 78. See also, AC-FCNM, 'Third Opinion on Liechtenstein' adopted on 26 June 2009 ACFC/OP/III(2009)001 at para 22; AC-FCNM, *supra* n 82 at paras 44, 54.

¹³⁰ Henrard, *supra* n 12 at 358.

¹³¹ *Ibid.*

¹³² 'Third Opinion on Liechtenstein', *supra* n 129 at para 22.

it is essential that all segments of society, majorities and minorities alike, are addressed in order for integration strategies to effectively facilitate the formation of societal structures where diversity and respect for difference are acknowledged and encouraged as normal.¹³³

Thus, a divergence between interculturalism and the AC-FCNM is unlikely to arise in this context.

Intercultural interactions and exchanges in everyday life are a central component of the *cohesion* strand of interculturalism and article 6(1) FCNM. From an interculturalist perspective, such exchanges facilitate integration by creating mutual trust,¹³⁴ and a sense of solidarity,¹³⁵ and by allowing stereotypes to be countered.¹³⁶ In turn, intercultural interactions improve integration by allowing a ‘common humanity to emerge’.¹³⁷ This understanding aligns with the approach advocated by the AC-FCNM, in relation to the Netherlands: ‘it is essential to create opportunities for interethnic dialogue in all spheres of life’ and ‘concerted efforts must be made to develop stronger relations between the different minority groups and the majority population and mutual understanding within society as a whole’.¹³⁸ The interculturalist vision and the AC-FCNM’s interpretation of the requirements of article 6(1) FCNM are largely consistent. However, while the AC-FCNM and interculturalists have emphasized that the authorities must create opportunities for intercultural interactions to take place,¹³⁹ interculturalists have additionally highlighted the corresponding role of civil society.¹⁴⁰

Interculturalists have recognized that intercultural dialogue is unlikely to facilitate societal cohesion if those participating do not have ‘intercultural competence’¹⁴¹ or ‘cultural navigational skills’.¹⁴² As noted in the Council of Europe’s White Paper, ‘[t]he competences necessary for intercultural dialogue are not automatically acquired: they need to be learned,

¹³³ AC-FCNM, supra n 82 at para 54.

¹³⁴ Bouchard, supra n 64 at 79.

¹³⁵ Loobuyk, supra n 43 at 229.

¹³⁶ Bouchard, supra n 64 at 79.

¹³⁷ Zapata-Barrero, supra n 29 at 157.

¹³⁸ AC-FCNM, ‘Second Opinion on the Netherlands’ adopted on 20 June 2013 ACFC/OP/II(2013)003 at para 58.

¹³⁹ Zapata-Barrero, supra n 29 at 160; ‘Second Opinion on the Netherlands’, supra n 138 at para 58; AC-FCNM supra n 82 at para 59.

¹⁴⁰ Loobuyk, supra n 43 at 235; Levey, supra n 49 at 203.

¹⁴¹ Barrett, supra n 47 at 156.

¹⁴² Cantle, supra n 7 at 312-13; Barrett, supra n 47 at 157.

practised and maintained throughout life'.¹⁴³ These skills allow respectful and appropriate interactions between individuals of different cultural backgrounds.¹⁴⁴ Intercultural education is central to intercultural competence and includes formal, informal and non-formal education.¹⁴⁵

The acknowledgment that intercultural education is 'a cornerstone in the creation of a cohesive society',¹⁴⁶ results in a strong convergence between article 6(1) FCNM and the *cohesion* strand of interculturalism. Lack of knowledge of 'the other' has been linked by the AC-FCNM to discrimination and the denial of rights.¹⁴⁷ This has the potential to undermine the intercultural competence of all groups in society. Consequently, the AC-FCNM has emphasized the importance that 'all languages and cultures that exist in society are visibly and audibly present in the public domain, so that everybody is aware of the diverse character of society and recognizes himself or herself as an integral part of it'.¹⁴⁸ Notably, both interculturalists and the AC-FCNM have recognized that States must redesign the education curriculum in order to ensure that a variety of cultures and perspectives are represented.¹⁴⁹ Further, the AC-FCNM has identified the role of the media alongside national¹⁵⁰ and local¹⁵¹ public awareness campaigns in providing accurate and unbiased information about the cultural practices of minorities and diversity in general.¹⁵² The AC-FCNM has also recommended that States adopt measures that 'place a greater emphasis on the positive contribution that foreigner's participation in society, including in the labour market, could make'.¹⁵³ This approach aligns with the *constructivist* strand of interculturalism¹⁵⁴ and demonstrates how the different strands of interculturalism are intertwined in practice.

¹⁴³ Council of Europe, supra n 3 at 29.

¹⁴⁴ Barrett, supra n 47 at 156.

¹⁴⁵ Bekemans, supra n 46 at 177.

¹⁴⁶ AC-FCNM 'Fourth Opinion on Spain' adopted on 3 December 2014 ACFC/OP/IV(2014)003 at para 46.

¹⁴⁷ AC-FCNM, 'Third Opinion on Switzerland' adopted on 5 March 2015 ACFC/OP/III(2013)001 at para 64.

¹⁴⁸ AC-FCNM, supra n 82 at para 61.

¹⁴⁹ Bekemans, supra n 46 at 183; Bouchard, supra n 25 at 107; 'Second Opinion on the Netherlands', supra n 138 at para 56; AC-FCNM, 'Fourth Opinion on Liechtenstein', adopted on 21 May 2014 ACFC/OP/IV(2014)002 at para 10; AC-FCNM, supra n 82 at para 60.

¹⁵⁰ AC-FCNM, 'Opinion on Portugal' adopted on 6 October 2006 ACFC/OP/I(2006)002 at para 41; AC-FCNM, 'Third Opinion on Sweden' adopted on 23 May 2012 ACFC/OP/III(2012)004 at para 62.

¹⁵¹ AC-FCNM, 'Third Opinion on Spain' adopted on 22 March 2012 ACFC/OP/III(2012)003 at para 73; AC-FCNM, 'Third Opinion on Ireland' adopted on 10 October 2012 ACFC/OP/III(2012)006 at para 76.

¹⁵² AC-FCNM, 'Second Opinion on Portugal' adopted on 5 November 2009 ACFC/OP/II(2009)003 at para 79; AC-FCNM, 'Second Opinion on the United Kingdom' adopted on 6 June 2007 ACFC/OP/II(2007)003 at paras 109, 116; AC-FCNM, 'Second Opinion on Italy' adopted on 24 February 2005 ACFC/INF/OP/II(2005)003 at para 82.

¹⁵³ AC-FCNM, 'Second Opinion on Denmark' adopted on 9 December 2004 ACFC/INF/OP/II(2004)005 at para 85. See also, AC-FCNM, 'Third Opinion on Germany' adopted on 27 May 2010

Interculturalists within both the *cohesion* and *contractual* strands have also submitted that the participation of all groups in the political structures of the State facilitates integration and societal cohesion.¹⁵⁵ This allows all groups to negotiate space for their identity within the public sphere, in a manner that is compatible with societal cohesion and individual rights.¹⁵⁶ Similarly, the AC-FCNM has acknowledged ‘that a key element to build up a cohesive society is to ensure that all its components are listened to and can contribute to the society they live in’.¹⁵⁷ Under both article 6(1) and 15 FCNM, the AC-FCNM has repeatedly called upon States to establish effective ‘participatory structures facilitating dialogue with the representatives of ethnic minority groups’.¹⁵⁸ Participation is particularly important in the context of public affairs that directly impact minorities, such as integration measures and policies.¹⁵⁹ Inadequate or ineffective mechanisms to facilitate the participation and consultation of minorities have the potential to lead to alienation.¹⁶⁰ Both the AC-FCNM and interculturalists have, thus, identified that *effective* participation is a requirement of societal cohesion.

Finally, interculturalists and the AC-FCNM have emphasized that measures to facilitate intercultural exchange and competence are unlikely to be successful as long as significant barriers to integration and participation exist. In this respect, Barrett recognizes that ‘equipping citizens with intercultural competence needs to take place in conjunction with and alongside measures to tackle inequalities and structural disadvantages, taking action to counter discrimination and remedying educational disadvantages’.¹⁶¹ Consequently, the State must adopt policies to combat disadvantage and inequality (the *contractual* strand), if intercultural exchange (the *cohesion* strand) is to be successful. This again highlights the interconnected nature of the different strands of interculturalism.

ACFC/OP/III(2010)003 at para 88; AC-FCNM, ‘Third Opinion on Norway’ adopted on 30 June 2011 ACFC/OP/III(2011)007 at para 67.

¹⁵⁴ Zapata-Barrero, supra n 29 at 163; Zapata-Barrero, supra n 32 at 64.

¹⁵⁵ Cantle, supra n 7 at 318. Zapata-Barrero, supra n 32 at 57; Barrett, supra n 28 at 27; Bouchard, supra n 64 at 78.

¹⁵⁶ Gagnon and Iacovino, supra n 127 at 117.

¹⁵⁷ AC-FCNM, ‘Opinion on the Netherlands’ adopted on 25 June 2009 ACFC/OP/I(2009)002 at para 38.

¹⁵⁸ ‘Second Opinion on the Netherlands’, supra n 138 at para 64. See also, ‘Second Opinion on the United Kingdom’, supra n 152 at para 252; AC-FCNM, ‘Third Opinion on the United Kingdom’, 30 June 2011, ACFC/OP/III(2011)006 at para 192; AC-FCNM ‘Third Opinion on Finland’ adopted on 14 October 2010 ACFC/OP/III(2010)007 at para 69; AC-FCNM, ‘Third Opinion on Italy’ adopted on 15 October 2010 ACFC/OP/III(2010)008 at para 77; AC-FCNM, ‘Third Opinion on Denmark’ adopted on 31 March 2011 ACFC/OP/III(2011)002 at paras 55, 59.

¹⁵⁹ ‘Third Opinion on Finland’, supra n 158 at paras 69, 74; ‘Third Opinion on Italy’, supra n 158 at para 77.

¹⁶⁰ ‘Second Opinion on the United Kingdom’, supra n 152 at para 253. See also, ‘Third Opinion on the United Kingdom’, supra n 158 at para 192.

¹⁶¹ Barrett, supra n 47 at 157.

Assimilationist policies,¹⁶² barriers to citizenship¹⁶³ and exclusionary conceptions of national identity¹⁶⁴ indicate that the majority does not respect the culture of the minority.¹⁶⁵ Respect is a prerequisite of societal cohesion and intercultural dialogue.¹⁶⁶ Similarly, intolerance, xenophobia and hate speech in the media¹⁶⁷ and political sphere¹⁶⁸ pose barriers to integration by contributing to ‘feelings of hostility and rejection’.¹⁶⁹ A corollary of xenophobia and intolerance is increased opposition to minority practices, including the preservation of language¹⁷⁰ and visible symbols of difference such as mosques and religious clothing.¹⁷¹ Thus, in the context of the persistent failure of the Danish authorities to grant planning permission for a purpose-built mosque in Copenhagen, the AC-FCNM recognized that this was ‘a matter that risks undermining intercultural dialogue with persons belonging to the Muslim faith’.¹⁷² While interculturalism does not concern itself with the preservation of culture,¹⁷³ Bouchard and Loobuyk have acknowledged that opposition to and interference with minority practices are often discriminatory¹⁷⁴ and, therefore, pose barriers to societal cohesion.¹⁷⁵ As consistently highlighted by the AC-FCNM, the conditions necessary for societal cohesion cannot easily be separated from measures to facilitate the preservation of minority identity.

Interculturalists and the AC-FCNM have also identified socio-economic disadvantage as a barrier to intercultural dialogue.¹⁷⁶ Although they agree that measures must be taken to

¹⁶² ‘Third Opinion on Germany’, supra n 153 at para 87; ‘Second Opinion on Denmark’, supra n 153 at para 84.

¹⁶³ ‘Opinion on Germany’ adopted on 1 March 2002 ACFC/INF/OP/I(2002)008 at para 40.

¹⁶⁴ ‘Third Opinion on Germany’, supra n 153 at para 87; ‘Opinion on the Netherlands’, supra n 157 at para 37.

¹⁶⁵ Raz, supra n 68 at 200.

¹⁶⁶ Article 6(1) FCNM; Zapata-Barrero, supra n 29 at 162.

¹⁶⁷ ‘Opinion on Portugal’, supra n 150 at para 47; AC-FCNM, ‘Opinion on the United Kingdom’ adopted on 30 November 2001 ACFC/INF/OP/I(2002)006 at para 51; AC-FCNM, ‘Opinion on Austria’ adopted on 16 May 2002 ACFC/INF/OP/I(2002)009 at para 32; ‘Second Opinion on Denmark’ supra n 153 at paras 79, 96-97; ‘Third Opinion on Italy’, supra n 158 at para 79; ‘Second Opinion on the United Kingdom’, supra n 152 at paras 112-113.

¹⁶⁸ ‘Third Opinion on Spain’, supra n 151 at para 73; AC-FCNM, ‘Fourth Opinion on Denmark’ adopted on 20 May 2014 ACFC/OP/IV(2014)001 at paras 61-66; ‘Second Opinion on Denmark’, supra n 153 at para 77; AC-FCNM, ‘Second Opinion on Norway’ adopted on 5 October 2006 ACFC/OP/II(2006)006 at para 83.

¹⁶⁹ ‘Opinion on Austria’, supra n 167 at para 32.

¹⁷⁰ ‘Opinion on the Netherlands’, supra n 157 at para 56-57.

¹⁷¹ AC-FCNM, ‘Opinion on Norway’ adopted on 12 September 2002 ACFC/INF/OP/I(2003)003 at para 36; ‘Second Opinion on Denmark’, supra n 153 at para 86; ‘Third Opinion on Spain’, supra n 151 at para 75.

¹⁷² ‘Second Opinion on Denmark’, supra n 153 at para 86.

¹⁷³ Zapata-Barrero, supra n 32 at 58.

¹⁷⁴ Bouchard, supra n 64 at 86.

¹⁷⁵ Loobuyk, supra n 43 at 233.

¹⁷⁶ AC-FCNM, ‘Second Opinion on Austria’ adopted on 8 June 2007 ACFC/OP/II(2007)005 at para 94; AC-FCNM, ‘Third Opinion on Austria’ adopted on 28 June 2011 ACFC/OP/III(2011)005 at para 69; AC-

combat socio-economic disadvantage, some measures identified by interculturalists have the potential to undermine the preservation of minority identities and, thus, may have an unanticipated assimilatory impact. For example, Barrett suggests that '[p]ublic authorities should ... promote ethnically mixed neighbourhoods'.¹⁷⁷ Neighbourhoods (unofficially) segregated on the basis of ethnicity have the potential to reduce minority access to high quality education, social services and employment opportunities. By facilitating the creation of diverse communities, 'ethnically mixed neighbourhoods' increase the opportunities for intercultural exchanges to take place. However, in practice, measures adopted to counteract segregation often blame minorities rather than 'the so-called "white flight" phenomena'.¹⁷⁸ Instead of facilitating improved inter-ethnic exchanges, this practice has been recognized by the AC-FCNM to pose additional barriers to societal cohesion by fuelling 'resentment among minority communities'.¹⁷⁹ Further, minorities often settle in the same area in order to access places of worship, language provision and other cultural resources. Thus, the 'ethnically mixed neighbourhoods' advocated by Barrett have the potential to reduce access to cultural resources and, thereby, undermine the ability of minorities to preserve their distinct identity. In turn, this may result in their involuntary assimilation. In contrast, the AC-FCNM has sought to balance the requirements of societal cohesion under article 6(1) with the preservation of minority identity under article 5(1) FCNM.¹⁸⁰

A similar division between interculturalists and the AC-FCNM arises in relation to the interculturalist requirement that persons belonging to minorities must learn the language of the majority in order to overcome socio-economic disadvantage¹⁸¹ and facilitate intercultural dialogue.¹⁸² Whilst the AC-FCNM accepts that it may be necessary for minorities to learn the language of the majority in order to facilitate integration, this should be complemented with mother tongue provision, in order to avoid involuntary assimilation.¹⁸³ Such provision is incompatible with Cantle's vision of interculturalism which rejects State support for minority practices. This divergence between the AC-FCNM and Cantle's interculturalism highlights how measures of interculturalism can have an unanticipated

FCNM, 'Second Opinion on Germany' adopted on 1 March 2006 ACFC/OP/II(2006)001 at para 70; Barrett, *supra* n 28 at 27; Loobuyk, *supra* n 43 at 233.

¹⁷⁷ Barrett, *supra* n 28 at 28.

¹⁷⁸ 'Opinion on the Netherlands', *supra* n 157 at para 56.

¹⁷⁹ 'Second Opinion on the United Kingdom', *supra* n 152 at para 114.

¹⁸⁰ AC-FCNM, *supra* n 82 at para 87. See further, OSCE, *supra* n 64 at 17.

¹⁸¹ Loobuyk, *supra* n 43 at 236.

¹⁸² *Ibid.*, at 235-6.

¹⁸³ 'Third Opinion on Finland', *supra* n 158 at para 70.

assimilatory impact. However, Barrett – within the *cohesion* strand – and Bouchard – within the *contractual* strand – both recognize the validity of reasonable accommodation, including mother tongue language provision. Accordingly, the approach of the AC-FCNM is only inconsistent with Cantele’s interculturalism.

The interpretation of article 6(1) FCNM by the AC-FCNM closely aligns with the requirements of societal cohesion identified by interculturalists. However, some of the good practices identified by interculturalists have the potential to lead to the involuntary assimilation of persons belonging to minorities if their specific vulnerabilities are not fully appreciated. The withdrawal of State support for minority practices, as advocated by Cantele, is particularly problematic in this respect. In practice, the AC-FCNM has sought to balance measures of interculturalism with measures to facilitate the preservation of minority identities. Consequently, the AC-FCNM has endorsed interculturalism but within a multiculturalist framework that reduces the potential for assimilationist interpretations.

B. Pursuing Interculturalism Outside of a Multiculturalist Framework: The European Convention on Human Rights

In its jurisprudence concerning the challenges posed by diverse societies, the ECtHR has repeatedly used and endorsed concepts that underpin interculturalism, including integration,¹⁸⁴ ‘social cohesion’,¹⁸⁵ ‘pluralism, tolerance and broadmindedness’,¹⁸⁶ ‘dialogue and a spirit of compromise’,¹⁸⁷ and ‘living together’.¹⁸⁸ However, the ECHR does not contain minority specific standards and the ECtHR has consistently failed to recognize the vulnerability of minorities to rights violations.¹⁸⁹ In order to test the hypothesis that interculturalism risks being conflated with assimilation if adopted outside a minority rights (multicultural) framework, this section examines the adoption of interculturalist concepts in ECtHR cases concerning religious minorities. It reveals that the ECtHR has consistently accepted interpretations of these concepts that legitimize assimilationist policies.

¹⁸⁴ *Konrad and Others v Germany* Application No. 35504/03, Admissibility, 11 September 2006; *Dojan and others v Germany* Application Nos 319/08; 2455/08; 7908/10; 8152/10; 8155/10, Admissibility, 13 September 2011; *Osmanoğlu and Kocabaş v Switzerland* Application No 29086/12, Merits, 10 January 2017, at paras 96-97, 103.

¹⁸⁵ *Gorzelić and others v Poland* Application No 44158/98, Merits, 17 February 2004, at para 92.

¹⁸⁶ See, for example, *Şahin*, supra n 60 at para 108; *SAS*, supra n 5 at para 128.

¹⁸⁷ *Dogru*, supra n 5 at para 62.

¹⁸⁸ *SAS*, supra n 5. See also, Trispiotis, ‘Two Interpretations of “Living Together” in European Human Rights Law’ (2016) 75 *Cambridge Law Journal* 580 at 595-6.

¹⁸⁹ See generally, Berry, supra n 113.

(i) *The manifestation of religion in State institutions*

From the perspective of interculturalism and the ECtHR, the management of diversity within and by State institutions is central to the achievement of societal cohesion.¹⁹⁰ The ECtHR does not explicitly endorse ‘interculturalism’ in cases concerning the manifestation of religion in State institutions. However, the cases considered here were decided after the adoption of the Council of Europe’s 2008 White Paper on Intercultural Dialogue and the ECtHR clearly establishes its commitment to concepts central to the pursuit of intercultural dialogue in its decisions. Specifically, it consistently reiterates that ‘[p]luralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals which are justified in order to maintain and promote the ideals and values of a democratic society’.¹⁹¹ Furthermore, in the educational context, the ECtHR has identified the importance of co-education, in order to facilitate integration and avoid ‘the emergence of parallel societies’.¹⁹² This mirrors the ‘parallel lives’ debate that emanated from ‘The Cattle Report’ into the 2001 riots in the North of England.¹⁹³

The ECtHR has considered the restriction of minority religious symbols in State institutions in France in a number of cases.¹⁹⁴ It has consistently found no violation of the applicants’ right to manifest religion on the basis that the restriction pursued the legitimate aim of upholding the constitutional principle of *laïcité*¹⁹⁵ and was consistent with margin of appreciation afforded to States to regulate the relationship between the Church and State.¹⁹⁶ The ECtHR’s approach is underpinned by the acceptance that secularism is consistent with

¹⁹⁰ Bouchard, supra n 25 at 95; Zapata-Barerro, supra n 32 at 64; Barrett, supra n 28 at 27. *Konrad and Others v Germany*, supra n 184; *Dojan and others v Germany*, supra n 184; *Osmanoğlu and Kocabaş*, supra n 184 at paras 96-97, 103.

¹⁹¹ *Dogru*, supra n 5 at para 62; *Kervanci v France* Application No 31645/04, Merits, 4 December 2008 at para 76; *Aktas v France* Application No 43563/08, Admissibility, 30 June 2009; *Bayrak v France* Application No 14308/08, Admissibility, 30 June 2009; *Gamaled dyn v France* Application No 18527/08, Admissibility, 30 June 2009; *Ghazal v France* Application No 29134/08, Admissibility, 30 June 2009; *Jasvir Singh v France* Application No 25463, Admissibility, 30 June 2009; *Ranjit Singh v France* Application No 27561/08, Admissibility, 30 June 2009.

¹⁹² *Dojan*, supra n 184.

¹⁹³ Cattle, supra n 19 at 9, 22. As discussed previously, this language has been the subject of criticism by the AC-FCNM for exacerbating rather than relieving the causes of exclusion, see further, ‘Second Opinion on the United Kingdom’, supra n 152 at para 114.

¹⁹⁴ *Dogru*, supra n 5; *Kervanci*, supra n 191; *Aktas* supra n 191; *Bayrak* supra n 191; *Gamaled dyn* supra n 191; *Ghazal* supra n 191; *Jasvir Singh* supra n 191; *Ranjit Singh* supra n 191; *Ebrahimian v France* Application No 64846/11, Merits and Just Satisfaction, 26 November 2015.

¹⁹⁵ The concept of *laïcité* is found in article 1 of the French Constitution and refers to the separation of Church and State. It is similar to secularism.

¹⁹⁶ *Dogru*, supra n 5 at para 72.

the role of the State as the ‘neutral and impartial organiser of the exercise of various religions, faiths and beliefs’.¹⁹⁷ While this appears to be compatible with Cantle’s interculturalism, insofar as ‘no faith is privileged over another’, Cantle has drawn a distinction between ‘secular governance’, which he identifies as desirable and ‘secular society’ which ‘is no longer appropriate’.¹⁹⁸ Similarly, Bouchard has expressed a preference for ‘inclusive secularity’.¹⁹⁹ Consequently, secularism and interculturalism are compatible provided that secularism does not result in the elimination of diversity from the public sphere.

The restriction of individual religious freedom in order to protect and uphold *laïcité* falls with the *contractual strand* of interculturalism, which permits *ad hoc* precedence to be granted to the ‘foundational culture’. However, as noted by Levey, there are three levels of *ad hoc* precedence: civilizational, historical-institutional and policy.²⁰⁰ These forms of *ad hoc* precedence should not be prioritised to the same degree. While the civilizational foundations of the State, for example language and calendar, are non-negotiable, the historical-institutional foundations, such as the adopted model of Church-State relations, tend to be inflexible but can be subject to reform.²⁰¹ Bouchard has, specifically, argued that ‘sometimes the state can bestow some privilege to the majority culture when it is closely associated with the formation or the preservation of the symbolic foundation’.²⁰² In contrast, policy decisions are flexible and, therefore, open to abuse.²⁰³ As a result, from an interculturalist perspective, civilizational and historical-institutional precedence is more legitimate than precedence at the policy level.²⁰⁴ In order to identify whether the ECtHR’s jurisprudence in cases concerning the restriction of religious symbols in State institutions is compatible with the *contractual strand* of interculturalism, the type of precedence invoked in these cases must be identified.

Laïcité has been central to French democracy since 1905,²⁰⁵ and regulates the relationship between Church and State and, thus, appears to be a historical-institution and ‘part of the symbolic foundation’. Notably, in *Dogru v France*, the ECtHR recognized that ‘secularism is a constitutional principle, and a founding principle of the Republic, to which the entire population adheres and the protection of which appears to be of prime importance,

¹⁹⁷ *Şahin*, supra n 60 at 107; *Dogru*, supra n 5 at para 106.

¹⁹⁸ Cantle, supra n 24 at 85.

¹⁹⁹ Bouchard, supra n 25 at 97.

²⁰⁰ Levey, supra n 49 at 212-13.

²⁰¹ Ibid.

²⁰² Bouchard, supra n 64 at 83.

²⁰³ Levey, supra n 49 at 213.

²⁰⁴ Ibid., at 213-14.

²⁰⁵ 1905 *Loi de Séparation des Églises et de l’État*.

in particular in schools’.²⁰⁶ On this basis, it would appear that the margin of appreciation allowed to France by the ECtHR in order to protect *laïcité* aligns closely with the concept of historical-institutional *ad hoc* precedence. and, therefore, is consistent with the pursuit of interculturalism.

However, the understanding of *laïcité* as a static foundational principle of the State should not be uncritically accepted. Following *l’affaire du foulard* in 1989, it became clear that *laïcité* was subject to multiple and competing interpretations. One such interpretation, *le droit à la différence*, sought to ‘allow the coexistence of different cultural groups’,²⁰⁷ and did not require restrictions to be placed on the manifestation of religion in State institutions. This approach clearly aligns with Bouchard’s ‘inclusive secularity’,²⁰⁸ and Cantle’s ‘secular governance’.²⁰⁹ However, *le droit à la différence* was rejected and the interpretation of *laïcité* subsequently adopted in France has actively sought to justify the pursuit of social homogeneity through the elimination of religious difference from the public sphere.²¹⁰ Akan has argued that *Loi no 2004-228*, which prohibits the wearing of ostentatious religious symbols in State schools,²¹¹ marked a shift from “‘inclusionary *laïcité*” to “‘exclusionary *laïcité*’”.²¹² Instead of ‘the pluralist transformation of public space, institutions and civic culture’ required by interculturalism,²¹³ *laïcité* has been redefined in France to justify the adoption of policies which exclude religious pluralism from the public sphere. This is *prima facie* incompatible with interculturalism.

The evolution of the concept of *laïcité* also suggests that it is not the static foundational principle accepted by the ECtHR. Consequently, restrictions on human rights justified by reference to the protection of *laïcité* are policy decisions. Precedence in the policy field is more likely to be abused than civilizational or historical-institutional precedence.²¹⁴ Zapata-Barrero explains that ‘[t]he new members of a society, arriving by way

²⁰⁶ Dogru, supra n 5 at para 72.

²⁰⁷ Chadwick, ‘Education in secular France: (re)defining *laïcité*’ (1997) 5 *Modern and Contemporary France* 47 at 55.

²⁰⁸ Bouchard, supra n 25 at 97.

²⁰⁹ Cantle, supra n 24 at 85.

²¹⁰ Chadwick, supra n 207 at 55.

²¹¹ *Loi no 2004-228 du 15 mars 2004 encadrant, en application du principe de laïcité, le port de signes ou de tenues manifestant une appartenance religieuse dans les écoles, collèges et lycées publics*. The concept of *laïcité* is found in article 1 of the French Constitution and refers to the separation of Church and State. It is similar to secularism.

²¹² Akan, ‘*Laïcité* and Multiculturalism: The Stasi Report in Context’ (2009) 60 *The British Journal of Sociology* 237 at 240.

²¹³ Bloomfield and Bianchini, supra n 62 at 156.

²¹⁴ Levey, supra n 49 at 212.

of immigration, sometimes challenge the actions and routine patterns of public conduct of tradition; they can, therefore, be perceived as potential threats to tradition'.²¹⁵ In reaction to a perceived threat the majority's identity may harden or be portrayed as non-negotiable.²¹⁶ This appears to underpin the shift towards an assimilationist interpretation of *laïcité* following *l'affaire du foulard*. Indeed, Chadwick suggests that this development was motivated by the majority's unwillingness to 'openly grant *laïcité's* guarantee of religious freedom to Islam'.²¹⁷

The redefinition of *laïcité* by the majority to exclude certain groups from equal constitutional protection constitutes an abuse of the dominant position and cannot be defended by reference to the pursuit of interculturalism. Notably, both Bouchard and Levey identify prohibitions on the wearing of religious symbols as a clear example of the abusive extension of *ad hoc* precedence.²¹⁸ While the margin of appreciation appears to operate similarly to the concept of *ad hoc* precedence, the discretion permitted to the State to restrict the manifestation of minority religions by the ECtHR far exceeds that recognized to be legitimate within the *contractual* strand of interculturalism. The ECtHR's jurisprudence demonstrates how *ad hoc* precedence can be misappropriated to justify assimilationist policies that restrict the rights of persons belonging to minorities.

It is perhaps unrealistic to expect the ECtHR to engage in a detailed evaluation of the evolution of *laïcité* in France. Nonetheless, the ECtHR can be expected to scrutinize the extent to which limitations on Convention rights pursue their purported aims. In the cases concerning the manifestation of religion in State institutions, the ECtHR has accepted that the restriction of article 9 ECHR pursues societal cohesion by reiterating in its decisions that '[p]luralism and democracy must also be based on dialogue and a spirit of compromise necessarily entailing various concessions on the part of individuals'.²¹⁹ Consequently, it is also valuable to consider whether the ECtHR's jurisprudence aligns with an interculturalist understanding of the requirements of societal cohesion.

The creation of mutual respect and understanding has been recognized by both the AC-FCNM²²⁰ and interculturalists²²¹ to be a prerequisite of intercultural dialogue. Thus, the

²¹⁵ Zapata-Barrero, supra n 29 at 164.

²¹⁶ Cantle, supra n 7 at 316.

²¹⁷ Chadwick, supra n 207 at 55-6.

²¹⁸ Bouchard, supra n 64 at 77, 86; Levey, supra n 49 at 216; Bouchard, supra n 25 at 97.

²¹⁹ *Dogru*, supra n 5 at para 62.

²²⁰ Council of Europe, supra n 13 at para 49.

²²¹ Zapata-Barrero, supra n 32 at 67.

interculturalist approach to diversity requires mutual adaptation and ‘the construction of a national memory that reflects the diversity of the whole society’.²²² Yet, the exclusionary interpretation of *laïcité* prevents persons belonging to religious minorities from influencing the national story.²²³ As recognized by the Council of Europe’s Parliamentary Assembly (PACE), ‘such decisions may give rise to the feeling among members of the communities concerned that they are not considered full members of the national community’.²²⁴ Despite the ECtHR’s reference to concepts closely aligned with interculturalism, the elimination of minority symbols from the public sphere in the examined cases is likely to create barriers to societal cohesion by establishing the assimilation of minorities into the way of life of the majority as a requirement of societal membership.

It is particularly significant that both States and the ECtHR have diminished the lived experiences of religious minorities in order to justify restrictions on religious practices. Specifically, in *Osmanoğlu and Kocabaş v Switzerland*, the applicants argued that the compulsory participation of their daughters in swimming classes within the State education system violated article 9 ECHR. The ECtHR accepted the legitimacy of the interference on the basis that it pursued ‘integration’ and ‘successful socialisation’ and that the State had sought to accommodate the applicants’ religious convictions by allowing their daughters to wear the *burkini*.²²⁵ The pursuit of integration through enforced ‘simultaneous, homogenous activity’ on basis of the majority’s conception of the good life is itself problematic.²²⁶ Specifically, from the perspective of interculturalism, it overlooks unequal power-relations and the counterproductive nature of placing coercive preconditions on societal membership.²²⁷ However, perhaps more significantly, the ECtHR rejected the applicants’ assertion that the *burkini* would have a ‘stigmatizing effect’, on the basis of a lack of evidence.²²⁸ Thus, it ignored the controversy surrounding the *burkini* that had unfolded in France the previous summer.²²⁹ The State, in this case, sought to facilitate interactions

²²² Bouchard, *supra* n 64 at 78.

²²³ Xanthaki, *supra* n 12 at 826.

²²⁴ PACE, Resolution 2076 (2015), Freedom of Religion and Living Together in a Democratic Society, 30 September 2015 at para 7.

²²⁵ *Osmanoğlu and Kocabaş*, *supra* n 184 at paras 101, 103.

²²⁶ Trotter, “‘Living Together’, ‘Learning Together’, and ‘Swimming Together’: *Osmanoğlu and Kocabaş v Switzerland* (2017) and the Construction of Collective Life’ (2018) 18 *Human Rights Law Review* 157 at 169.

²²⁷ Barrett, *supra* n 28 at 31.

²²⁸ *Osmanoğlu and Kocabaş*, *supra* n 184 at para 101

²²⁹ Mulholland, ‘Corsican Town Becomes Third in France to Ban the Burkini After Riots’, *The Telegraph*, 15 August 2016, available at: www.telegraph.co.uk/news/2016/08/15/corsican-town-becomes-third-in-france-to-ban-the-burkini-after-r/ [last accessed 29 March 2018].

between different groups in society. However, both the State and the ECtHR disregarded the experience of persons belonging to minorities, an approach has the potential to alienate and, thus, undermine rather than facilitate societal cohesion.

Furthermore, socio-economic disadvantage, particularly in the fields of employment and education,²³⁰ is recognized to pose barriers to intercultural dialogue and societal cohesion.²³¹ In cases concerning State schools, the ECtHR has accepted that the exclusion of the applicants from mainstream education is proportionate to the aim pursued.²³² Moreover, in *Ebrahimian*, the ECtHR accepted that it is legitimate to limit the manifestation of religion by individuals in public sector employment.²³³ In practice, this excludes *hijab* wearing Muslim women, and other religious minorities, from 21 percent of employment opportunities in France.²³⁴ Rather than facilitating societal cohesion, the accepted measures are likely to be counterproductive, as they increase socio-economic disadvantage by reducing access to education and employment.

Interculturalists and the AC-FCNM have, further, recognized that socio-economic disadvantage increases segregation and leads to the ‘parallel existence’ phenomenon.²³⁵ The exclusion of visible signs of diversity from mainstream education and a significant proportion of the workforce has the potential to exacerbate such segregation. Rather than pursuing ‘secular governance’, these measures seek to create a ‘secular society’, which is problematic from the perspective of Cantle’s interculturalism.²³⁶ Specifically, it reduces the opportunities for all groups to adapt to the realities of living in a plural society and gain intercultural competence.²³⁷ The exclusion of religious symbols from State institutions has the potential to increase barriers to intercultural dialogue and undermine societal cohesion, rather than create the conditions necessary for intercultural dialogue to take place.

On a superficial level, the approach of the ECtHR in cases concerning the manifestation of religion in State institutions appears to align with interculturalism. The margin of appreciation is comparable to historical-institutional *ad hoc* precedence and the

²³⁰ Barrett, supra n 28 at 27.

²³¹ Loobuyk, supra n 43 at 233.

²³² *Dogru*, supra n 5 at para 76; *Kervanci*, supra n 191 at para 76; *Aktas*, supra n 191; *Bayrak*, supra n 191; *Gamaleddyn*, supra n 191; *Ghazal*, supra n 191; *Jasvir Singh*, supra n 191; *Ranjit Singh*, supra n 191.

²³³ *Ebrahimian*, supra n 194.

²³⁴ Brems, ‘Ebrahimian v France: Headscarf Ban Upheld for Entire Public Sector’, *Strasbourg Observers*, Blog commenting on developments in the case law of the European Court of Human Rights, 27 November 2015, available at: strasbourgobservers.com/2015/11/27/ebrahimian-v-france-headscarf-ban-upheld-for-entire-public-sector/ [last accessed 29 March 2018].

²³⁵ ‘Second Opinion on the Netherlands’, supra n 138 at para 58; Cantle, supra n 48 at 155.

²³⁶ Cantle, supra n 24 at 85.

²³⁷ Barrett, supra n 28 at 26; Cantle, supra n 7 at 312; Zapata-Barrero, supra n 32 at 63.

ECtHR accepts that these policies pursue societal cohesion. However, policies that seek to eliminate diversity from the public sphere directly undermine interculturalism, especially when motivated by the majority's unease with difference. These cases demonstrate how easily States can appropriate interculturalist concepts in order to legitimize assimilationist policies. The approach adopted by the ECtHR, in particular, the deference to the State through the wide margin of appreciation, fails to recognize the vulnerability of minorities to human rights violations.

(ii) *'Living together' and the 'ban on face coverings'*

The ECtHR directly adopted the language of interculturalism in the case of *SAS v France* and the analogous cases of *Belcacemi and Oussar v Belgium* and *Dakir v Belgium*.²³⁸ In *SAS v France*, the ECtHR accepted that the concept of '*vivre ensemble*' or 'living together' justified *Loi no 2010-1192 interdisant la dissimulation du visage dans l'espace public* (the 'ban on face coverings'), which restricted the applicant's right to manifest her religion by wearing the *burqa*.²³⁹ Intercultural dialogue and the associated concept of 'living together' was introduced into the Council of Europe through the Committee of Ministers' 'White Paper on Intercultural Dialogue: Living Together as Equals in Dignity',²⁴⁰ and the link between 'intercultural dialogue' and 'living together' has been confirmed by PACE.²⁴¹

The interpretation of 'living together' accepted in *SAS v France*, 'respect for the minimum set of values of an open and democratic society',²⁴² aligns with interculturalism insofar as human rights, democracy and the rule of law are recognized to 'determine the limits of the respect accorded to cultural practices'.²⁴³ Trispiotis suggests that '[b]oth the majority of the ECtHR in *S.A.S.* and Resolution 2076 of the Council of Europe employ "living together" as a *portmanteau* concept covering various different principles, including solidarity, fraternity, civility and mutual respect'.²⁴⁴ Moreover, France indicated that the intention of the law was to remove barriers to intercultural dialogue; 'it was a question of responding to a practice that the State deemed incompatible, in French society, with the

²³⁸ *Belcacemi and Oussar v Belgium*, Application No 37798/13, Merits and Just Satisfaction, 11 July 2017, at para 61; *Dakir v Belgium*, Application No 4619/12, Merits and Just Satisfaction, 11 July 2017, at para 60.

²³⁹ *SAS*, supra n 5 at para 157.

²⁴⁰ Council of Europe, supra n 3.

²⁴¹ PACE, supra n 224 at para 12.

²⁴² *SAS*, supra n 5 at para 82.

²⁴³ Barrett, supra n 47 at 157. See also Council of Europe, supra n 3 at 16.

²⁴⁴ Trispiotis, supra n 188 at 594.

ground rules of social communication'.²⁴⁵ These interpretations of 'living together' appear to correspond with the *cohesion* strand of interculturalism. However, the term *vivre ensemble* had previously been employed in France to justify restrictions on the wearing of religious symbols in State schools and, consequently, has an implicit assimilationist connotation at a domestic level.²⁴⁶

The adoption of a law in order to mediate differences between the majority and minorities again falls with the *contractual* strand of interculturalism. Bouchard has suggested that it is possible to justify restrictions on the *burqa* on the basis of *ad hoc* precedence, if they pursue the legitimate objectives of gender equality,²⁴⁷ or 'security or other compelling reasons'.²⁴⁸ Both of these arguments were adopted by the French government in *SAS v France* and are legitimate grounds of limitation under article 9(2) ECHR. However, the ECtHR did not agree that the 'ban on face coverings' pursued the aim of 'gender equality',²⁴⁹ whereas in relation to 'public order' it found that that blanket nature of the ban was disproportionate to the aim pursued.²⁵⁰ Similarly, while Bouchard has accepted that some restrictions on the *burqa* can be justified within the *contractual* strand of interculturalism, he has also argued that blanket bans are too far-reaching and, therefore, constitute an abuse of the dominant position.²⁵¹ Thus, the two legitimate arguments from the perspective of the *contractual strand* failed in *SAS v France*.

However, the French government successfully invoked 'living together' as a justification for limiting the applicant's rights under the ground of 'the rights and freedoms of others'. Consequently, the ECtHR accepted that the 'ban on face coverings' pursued the *cohesion* strand of interculturalism. The legitimacy of invoking the *cohesion* strand of interculturalism in order to justify the restriction of the rights of persons belonging to minorities warrants further exploration. As previously noted, interculturalism risks being conflated with assimilation when the inherent bias of liberal States in favour of the preferences of the majority is not recognized. Consequently, the French 'ban on face coverings' has the potential to result in the alienation of minority communities rather than societal cohesion.

²⁴⁵ *SAS*, supra n 5 at para 153.

²⁴⁶ Chadwick, supra n 207 at 54.

²⁴⁷ Bouchard, supra n 64 at 86.

²⁴⁸ Bouchard, supra n 7 at 459-60.

²⁴⁹ *SAS*, supra n 5 at 119-120.

²⁵⁰ *Ibid.*, at para 139.

²⁵¹ Bouchard, supra n 64 at 86. See, also, Levey, supra n 49 at 216.

In *SAS v France*, the ECtHR accepted that ‘in view of the flexibility of the notion of “living together” and the resulting risk of abuse, the Court must engage in a careful examination of the necessity of the impugned limitation’.²⁵² This approach appears to align with interculturalism, insofar as it recognizes the need for *ad hoc* precedence to be balanced with the human rights of minorities. Yet, the ECtHR also accepted that it had ‘a duty to exercise a degree of restraint’ on the basis of the democratic origins of the ‘ban on face coverings’.²⁵³ Thus, the ECtHR accepted that France had a wide margin of appreciation in relation to ‘living together’.²⁵⁴ It is not possible for the ECtHR to simultaneously ‘engage in a careful examination’ and ‘exercise a degree a restraint’. The lack of scrutiny associated with the margin of appreciation has the potential to undermine any attempt to identify the ‘abuse of the dominant position’. This is particularly apparent in relation to the ‘ground rules of social communication’ accepted by the ECtHR as sufficient to justify the restriction of the applicant’s rights.

The French government indicated that it was motivated by the wish to reduce barriers to dialogue and exchanges between members of the majority and minorities,²⁵⁵ which appears to align with the *cohesion* strand of interculturalism. However, Barrett warns that ‘any dialogue is inevitably affected by status differentials and power relations between the participants within the dialogue and so it rarely takes place on a level playing field’.²⁵⁶ It is clear that in *SAS v France* the identified ‘ground rules of social communication’ were based on the preferences of the majority. Specifically, Trotter argues that ‘the Court ... took on the conceptualisation of “the” community that underpinned the French principle of “living together” here: a community pre-established and maintained on its own terms’.²⁵⁷ *Loi no 2010–119* is framed in a neutral manner. However, the debate surrounding its adoption indicates that it was specifically intended to prohibit the wearing of the *burqa* and *niqab*.²⁵⁸ and a number of majority practices are excluded from the scope of the law.²⁵⁹ Nonetheless, in

²⁵² *SAS*, supra n 5, at para 122.

²⁵³ *Ibid.*, at para 154.

²⁵⁴ *Ibid.*, at para 155.

²⁵⁵ *Ibid.*, at para 25.

²⁵⁶ Barrett, supra n 28 at 31.

²⁵⁷ Trotter, supra n 226 at 159.

²⁵⁸ Hunter-Henin, ‘Why the French Don’t Like the Burqa: Laïcité, National Identity and Religious Freedom’ (2012) 61 *International and Comparative Law Quarterly* 613 at 615-16.

²⁵⁹ Article 2.ii *Loi no 2010–1192 interdisant la dissimulation du visage dans l’espace public*; *Assemblée Nationale, Projet de loi interdisant la dissimulation du visage dans l’espace public Etude d’impact*, Mai 2010, Sommaire para 4.1.3.

its decision, the ECtHR accepted the neutrality of the law²⁶⁰ and did not recognize that power differentials had allowed the preferences of the majority to legitimize indirect discrimination against persons belonging to minorities.²⁶¹

Interculturalism requires ‘a search for balance and mediation between often-competing principles, values and expectations’.²⁶² However, the coercive nature of the law,²⁶³ the exemption of majority practices from its scope alongside the identified power differentials evidences that the ‘ban on face coverings’ was not the ‘search for balance’ required by both the *contractual* and *cohesion* strands of interculturalism. Rather than pursuing ‘living together’ through mutual adaptation, ‘the ban on face coverings’ sought to eliminate visible symbols of diversity, which were a source of discomfort for the majority. This was acknowledged in the partially dissenting judgment in *SAS*,

... the blanket ban could be interpreted as a sign of selective pluralism and restricted tolerance ... It has not sought to ensure tolerance between the vast majority and the small minority, but had prohibited what is seen as a cause of tension.²⁶⁴

This not only constitutes an abuse of the dominant position, but also has the potential to undermine intercultural dialogue by alienating members of the minority. Indeed, the majority in the ECtHR recognized that the law had ‘upset part of the Muslim community’²⁶⁵ and had the potential to lead ‘to the consolidation of the stereotypes which affect certain categories of the population and of encouraging the expression of intolerance’.²⁶⁶ This is directly at odds with the aims of intercultural dialogue and the *cohesion* strand, which seek to facilitate societal cohesion by challenging stereotypes in order to reduce ‘the fear of “others”’.²⁶⁷ Yet, the ECtHR was unwilling to challenge the interpretation of ‘living together’ adopted by the

²⁶⁰ *SAS*, supra n 5, at para 151.

²⁶¹ Brems, ‘S.A.S. v. France as a Problematic Precedent’, *Strasbourg Observers*, Blog commenting on developments in the case law of the European Court of Human Rights, 9 July 2014, available at: strasbourgobservers.com/2014/07/09/s-a-s-v-france-as-a-problematic-precedent/ [last accessed 29 March 2018]; Trispiotis, supra n 188 at 602.

²⁶² Bouchard, supra n 7 at 461.

²⁶³ Wilson, supra n 65 at 55.

²⁶⁴ *SAS*, supra n 5 at Dissenting Opinion of Judges Nussberger and Jäderblom para 14.

²⁶⁵ *Ibid.*, at para 150.

²⁶⁶ *Ibid.*, at para 149.

²⁶⁷ *Cantle*, supra n 48 at 155.

French government, on the basis that it had been adopted following a democratic process.²⁶⁸ This, again, fails to recognize the potential for the abuse of the dominant position.

Finally, the impact of *Loi no 2010-1192* on women who choose to wear the *burqa* also dispels the suggestion that it sought to facilitate intercultural interactions. Rather than encouraging women who wear the *burqa* to participate in social communication, it has been reported that following the adoption of *Loi no 2010-1192*, they have avoided ‘going out’.²⁶⁹ This danger was acknowledged by the ECtHR, which noted that ‘the ban may have the effect of isolating them and restricting their autonomy’.²⁷⁰ This directly undermines the law’s purported aims.²⁷¹ Instead of enabling the majority and minorities to gain intercultural competence through everyday interactions, the ‘ban on face coverings’ has, in practice, reduced the opportunities for intercultural dialogue to take place.

In *SAS*, the ECtHR accepted an understanding of ‘living together’ that permitted the unease of the majority with the visible presence of difference to take priority over the Convention rights of minorities, even though it recognized that the law, in practice, posed significant barriers to intercultural dialogue and societal cohesion. If the purpose of interculturalism is to encourage societal cohesion, the majority cannot be permitted to restrict the rights of minorities without good reason. That good reason cannot be interculturalism itself. Otherwise, ‘living together’ allows the majority to set the terms of societal membership and does not recognize the need for mutual adaptation. By prioritizing the preferences of the majority above the concrete rights of the minority, ‘the ban on face coverings’ constitutes an abuse of the dominant position and demonstrates how easily Bouchard’s *ad hoc* precedence can be misappropriated to support assimilationist policies.

(iii) *The ECtHR: Conflating interculturalism and assimilation?*

From an interculturalist perspective, the restrictions placed on the manifestation of religion in the examined ECtHR cases constitute an abuse of the dominant position and are more likely to undermine than facilitate societal cohesion. Yet, these cases also reveal that the language of interculturalism can be (mis)appropriated and interpreted to support measures of assimilation. As warned by critics, interculturalism ‘easily slides in practice towards

²⁶⁸ *SAS*, supra n 5 at paras 153-154.

²⁶⁹ *Ibid.*, at para 96.

²⁷⁰ *Ibid.*, at para 146.

²⁷¹ Trispiotis, supra n 188 at 605.

imposing assimilation as a condition of integration'.²⁷² As France openly pursues assimilation as a method of diversity management,²⁷³ the adoption of assimilationist policies is to be anticipated. However, the ECtHR has been unwilling to engage with the requirements of societal cohesion and question the validity of assimilationist 'integration policies'. In *SAS v France*, the ECtHR deferred to the democratic process,²⁷⁴ and, thus, did not engage with the vulnerability of minorities to human rights abuses.

Both the 'ban on face coverings' and the restrictions placed on the manifestation of religion in State institutions have the potential to reduce the intercultural competence of members of French society. By eliminating diversity from the public sphere, these measures do not insist upon the adaptation of the majority to the presence of diversity within society. Consequently, the majority's resistance to visible symbols of difference in the public sphere is likely to increase in the future. This is evidenced by the extension of the ban on religious symbols from schools to public institutions²⁷⁵ and the workplace, more generally,²⁷⁶ the recent move to ban the *burkini* on public beaches²⁷⁷ and the expulsion of Muslim girls from schools for wearing long skirts.²⁷⁸ Such measures exclude the targeted communities from societal membership and, thus, have the potential to undermine societal cohesion by increasing alienation and marginalization.

4. CONCLUSION

Interculturalism has been presented as a panacea for the alleged failings of multiculturalism. Consequently, the terms interculturalism, living together, intercultural dialogue, integration and social cohesion have replaced the language of multiculturalism in Europe. This article has demonstrated that there is much common ground between interculturalism and the international human rights regime. Both recognize the value of diversity and the fluid nature

²⁷² Taylor, supra n 9 at 420. Kymlicka, supra n 2 at 214.

²⁷³ Article 21-24 du Code civil. *En revanche, l'assimilation est une condition de la naturalisation.*

²⁷⁴ *SAS*, supra n 5 at para 154.

²⁷⁵ *Ebrahimian*, supra n 194.

²⁷⁶ *Baby Loup case* Cass Ass Plén 25 June 2014, (2014) Rec D 1386; Case C-157/15 *Request for a preliminary ruling from the Hof van Cassatie (Belgium) lodged on 3 April 2015* — Samira Achbata, *Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* (2015) 58 Official Journal of the European Union C 205/24 at 17-18; Case C-188/15 *Asma Bougnaoui, Association de défense des droits de l'homme (ADDH) v Micropole Univers SA* (2015) 88 Official Journal of the European Union C 221/03 at 2-3.

²⁷⁷ Mulholland, supra n 229.

²⁷⁸ BBC News, 'France Outcry over Muslim Schoolgirl's Skirt Ban', 29 April 2015, available at: www.bbc.co.uk/news/world-europe-32510606 [last accessed 29 March 2018].

of culture, reject assimilation and accept that it is legitimate for States to seek to integrate diverse societies. However, two key elements of interculturalism – *ad hoc* precedence and the removal of State support for minority practices – have the potential to legitimize measures of assimilation, contrary to international human rights law.

The dangers associated with the (mis)appropriation of the language of interculturalism have been realized in the ECtHR, a body that does not have a minority rights mandate. The approach adopted by the ECtHR not only legitimises interference with the human rights of persons belonging to minorities but also has the potential to undermine societal cohesion by alienating minorities and reducing the intercultural competence of all members of society. In contrast, the AC-FCNM has adopted an approach that is largely consistent with interculturalism but has sought to balance societal cohesion with the preservation of minority identity. This has prevented interculturalist concepts from taking on assimilationist interpretations. It is striking that while that AC-FCNM has stressed the importance that ‘all languages and cultures that exist in society are visibly and audibly present in the public domain’,²⁷⁹ the ECtHR has accepted measures that eliminate diversity from the public sphere. To some extent the divergence between the AC-FCNM and ECtHR can be attributed to the different mandates of the two bodies. Nonetheless, the preceding analysis highlights that if the language of interculturalism is to avoid being (mis)appropriated to legitimise assimilationist policies, then both the inherent bias of the liberal State in favour of the majority culture and the vulnerability of minorities to human rights abuses must be recognized. Thus, if interculturalism is to be compatible with international human rights standards it must be adopted within a minority rights (multiculturalist) framework.

ACKNOWLEDGEMENTS

The author acted as a legal adviser to the applicant in the case of *SAS v France* Application No 43835/11. All views expressed in this article are the author's own and do not necessarily reflect the views of the legal team. The author would like to thank Alex Conte, Alex Latham, Daithí Mac Síthigh, Sue Millns, Laura Morosanu, Richard Race, Charlotte Skeet, Bal Sokhi-Bulley, Kenneth Veitch, Alexandra Xanthaki, the Editors of the *Human Rights Law Review* and an anonymous referee for their helpful comments on earlier drafts of this article. She would also like to thank Chaima Sliti for her research assistance. All errors and omissions remain the author's own.

²⁷⁹ AC-FCNM, *supra* n 82 at para 61.